

NOT FOR PUBLICATION

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

SOUTH JERSEY ADJUSTMENT BUREAU,
INC.,

Plaintiff,

v.

MICHAEL A. SIMMONDS, SR., and
MICHAEL A. SIMMONDS CO.,

Defendants.

Civ. No. 1996-234

ATTORNEYS:

Francis E. Jackson, Jr., Esq.
St. Thomas, U.S.V.I.
For the plaintiff,

Lee J. Rohn, Esq.
St. Thomas, U.S.V.I.
For the defendants.

MEMORANDUM

This matter is before the Court on the defendants' numerous motions to dismiss, which will be granted for the reasons set forth below.

On November 5, 1996, plaintiff South Jersey Adjustment Bureau, Inc. ["SJAB"] filed the present action. Several weeks later, the defendants answered and served interrogatories on SJAB. Due to medical problems afflicting SJAB's President, Anthony DiSimone ["DiSimone"], the plaintiff did not file a response.

On September 4, 1997, the Court ordered SJAB to "file its

responses . . . within thirty days or provide competent medical excuse why [it] is unable to do so." One month later, the Court granted plaintiff until November 7th to answer the defendants' interrogatories. After SJAB failed to respond to these discovery requests, the defendants moved to dismiss this matter for lack of prosecution on November 14, 1997.

On January 8, 1998, the Court indulged SJAB with an additional ten days to "respond to the motion to dismiss . . . including competent medical authority concerning plaintiff's ability to maintain this case." Twenty days later, the plaintiff provided some discovery and submitted two letters from medical professionals that described DiSimone's status. On January 29th, the Court ordered SJAB to provide within ten days a medical certificate explaining whether DiSimone's health would permit plaintiff to pursue this case. SJAB did not comply with this Order.

On February 17, 1998, the Court renewed its request and asked SJAB to provide a medical certificate by March 1st. Several days later, the defendants renewed their motion to dismiss. March 1st came and went without a response from the plaintiff. On March 26th and May 13th, the defendants again moved for dismissal of this action. Finally, on May 22nd, the Court threatened SJAB with sanctions and an award of costs for failing

to respond to the defendants' outstanding discovery requests. Although the plaintiff engaged in limited discovery during June, 1998, it has taken no steps to advance this litigation since that time.

Federal Rule of Civil Procedure 41(b) authorizes this Court to dismiss an action "[f]or failure of the plaintiff to prosecute or to comply with . . . any order of court." See FED. R. CIV. P. 41(b). Dismissal, of course, is a "drastic sanction . . . reserved for those cases where there is a clear record of delay or contumacious conduct by the plaintiff." *Poulis v. State Farm Fire and Cas. Co.*, 747 F.2d 863, 866 (3d Cir. 1984).

SJAB's continued delay in responding to discovery requests, providing medical certification to this Court, and prosecuting this action warrants dismissal of this case. SJAB is responsible for this delay, which has drawn out these proceedings and hindered the defendants' ability to prepare their defense. It has frequently ignored the Court's Orders. This history of dilatoriness leads the Court to question whether any other sanction would even faze the plaintiff. Certainly no other sanction would cure the consequences of its delay. If SJAB had responded in a timely fashion to the defendants' requests, the defendants could have utilized the responses to promptly secure testimonial evidence, to gather important physical evidence, and

to discover the identity of witnesses. Instead, the plaintiff has stymied the defendants' efforts to defend this suit. The plaintiff cannot invoke this Court's jurisdiction and then ignore its obligations to the tribunal and the opposing parties. It is therefore

ORDERED that the above-captioned case is **DISMISSED** with prejudice. The Clerk of Court is directed to close the administrative file for this case.

ENTERED this 16th day of April, 1999.

FOR THE COURT:

_____/s/_____
Thomas K. Moore
Chief Judge

ATTEST:
ORINN ARNOLD
Clerk of the Court

By:_____/s/_____
Deputy Clerk

Copies to:
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